

(2014) 12 KL CK 0005

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 10675 of 2009 (D)

K.A. Mohammed Salim

APPELLANT

Vs

The District Collector

RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Kerala Building Tax Act, 1975 — Section 5A

Citation : (2014) 12 KL CK 0005

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : V.S. Afsal Khan, Advocate for the Appellant; Mohan Jacob George, P.V. Parvathi, Reena Thomas, Rammohan L., Advocates and K.T. Lilly, Advocate Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner constructed a residential building having a total plinth area of 333.24 sq.metres. According to the petitioner, the construction of the said building was completed in the year 1998. Thereafter, the petitioner has been remitting the property tax in respect of the building from the year 1998 onwards. While so, the 3rd respondent passed Ext. P6 assessment order, and issued Ext. P5 demand notice on the petitioner, assessing the building of the petitioner to building tax on a plinth area of 333.24 sq.metres and also assessing the building to luxury tax with effect from 1999-2000. Aggrieved by the said order of the Tahsildar, the petitioner preferred an appeal before the 2nd respondent, who by Ext. P7 order rejected the appeal. A further revision preferred before the 1st respondent was also rejected by Ext. P8 order. In the writ petition, the petitioner impugns Exts. P5, P6, P7 and P8 orders, inter alia, on the ground that the building in question was put up before 1999 and hence could not have attracted the levy of luxury tax in terms of Section 5A of Kerala Building Tax Act.

2. A counter affidavit has been filed on behalf of the 3rd respondent wherein it is stated that the plinth area of the building put up by the petitioner was measured

by the Village Officer and it was found to cover a plinth area of 333.24 sq.metres. It is pointed out that, in the return filed by the petitioner, although the date of occupation of the building is shown as 02.04.1998, the petitioner did not mention the date of completion of the building and it was under these circumstances that, while completing the assessment of the building in terms of the Kerala Building Tax Act, the petitioner was found liable to pay luxury tax under Section 5A of the Act. It is further pointed out that, both in the appeal as well as in the revision preferred by the petitioner against the assessment order, the petitioner did not produce any document to substantiate his contention that the construction of the building was completed prior to 1999 for the purposes of Section 5A of the Act.

3. I have heard Sri V.S. Afsal Khan, the learned counsel for the petitioner as also Smt. K.T. Lilly the learned Government Pleader appearing on behalf of the respondents.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that in the present case while it has been the contention of the petitioner that the construction of the building put up by him was completed prior to 1999 and, therefore, the levy of luxury tax under Section 5A of the Act would not be attracted to the said building, the petitioner has not been able to substantiate this fact before any of the authorities for the purposes of claiming an exemption from the levy of luxury tax. In that view of the matter, I cannot find fault with Exts. P7 and P8 orders passed by the 2nd and 1st respondents respectively. The challenge in the writ petition against Exts. P5, P6, P7 and P8, to the extent they confirm the levy of luxury tax on the petitioner for the years in question must therefore necessarily fail. I however, make it clear that the levy of luxury tax being a yearly levy, if the petitioner is able to substantiate his contention with regard to the completion of construction of the building prior to 1999, by adducing cogent evidence before the authority concerned, in proceedings for luxury tax assessment in any future year, then it shall be incumbent upon the respondent to consider the said documents produced by the petitioner and determine whether the levy of luxury tax under Section 5A would in fact be attracted to the building in question. The charge of luxury tax being a yearly levy, the mere fact that the petitioner has been assessed to luxury tax in respect of the building for earlier years will not stand in the way of the petitioner establishing that the building did not attract the liability to luxury tax, in respect of any subsequent year. Thus leaving it open to the petitioner to establish his claim for the future year, I dismiss the writ petition, to the extent it challenges the orders confirming the demand of luxury tax for the years covered by Ext. P6 assessment order.